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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/788,674	02/21/2001	Sergey N. Razumov	59036-014	6036

7590 10/18/2007
MCDERMOTT, WILL & EMERY
600 13th Street, N.W.
Washington, DC 20005-3096

EXAMINER

FADOK, MARK A

ART UNIT	PAPER NUMBER
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3625

MAIL DATE	DELIVERY MODE
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10/18/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/788,674

Applicant(s)

RAZUMOV, SERGEY N.

Examiner

Mark Fadok

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 8/2/2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 24, 25, 27, 28, 33, 34, 39 and 40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 24, 25, 27, 28, 33, 34, 39 and 40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

The examiner is in receipt of applicant's response to office action mailed 5/3/2007, which was received 8/2/2007. Acknowledgement is made that there were no amendments to the claims, leaving claims 24,25,27,28,33, 34 ,39 and 40 as open to prosecution. The examiner has considered applicant's amendment and arguments but does not find them persuasive, therefore the previous office action is restated below:

Examiner's Note

Examiner has cited particular columns and line numbers or figures in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 24,25,33 and 34 rejected under 35 U.S.C. 103(a) as being unpatentable over Vallabh (US 7,054,832) in view of Khan (US 6,263,316).

In regards to claims 24,25,33 and 34, Vallabh teaches all the features of the instant claims except as follows. Vallabh discloses storing purchased products in a remote site for later pick-up (Fig 1) automatically assigning a pickup location (col 11, lines 50-67), then further direct the product be delivered to the assigned pickup point (col 10, lines 50-65) in a movable arraignment (FIG 12, item 320). Vallabh further teaches dynamically assigning by determining which stations are available (col 11, lines 50-67, but does not specifically mention that the pickup station is automatically released when the ordered purchase is obtained. Khan teaches automatically indicating when a transaction is completed and a vehicle has left a pickup area (col 7 and 8). It would have been obvious to a person having ordinary skill in the art at the time of the invention to include in Vallabh automatically indicating that the vehicle has left the pick-up station, because this would enable a quick transfer of goods (col 9, lines 25-30).

In regards to claim 39, the combination of Vallabh and Khan teach wherein the control system is configured for automatically releasing the purchase pick-up point assigned to the customer in response to payment by the customer (Khan, fig 8, lines 1-5).

Claims 27 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vallabh in view of Khan and further in view of Joseph (5,635,906).

In regards to claims 27 and 28, Vallabh teaches picking up orders that are assembled by a third party, but does not specifically mention that the old and well known process of inspecting the package to assure that all the items have been correctly packaged for pick-up is present. Joseph teaches using a weight system to assure that all the products have been provided to the customer. It would have been obvious to include in Vallabh the use of the weight system as taught by Joseph, because this is a quick and efficient method to assure that all the ordered products have been included in the package for pick-up, thus quickly moving the customer from the lane so that another customer can use it for pick-up.

In regards to claim 40, the combination of Vallabh, Khan and Joseph teach identifying availability of a pick-up station (see Vallabh in view of Khan supra) and completing inspection to indicate the conclusion of a transaction and releasing the purchased product (Joseph, col 2, line 50 – col 3, line 4). Since the inspection assures prior to release pickup station the combination meets the feature as stated in the instant claims.

Response to Arguments

Applicant's arguments filed 8/2/2007 have been fully considered but they are not persuasive.

In response to applicant's argument that Khan and Vallabh are nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, both references teach similar pickup point controls such as controlling the use of a loading station and both further teach the use of the use of customer detection and identification stations similar to automated highway toll collection stations.

Additionally, the Examiner notes that the teaching-suggestion-motivation test is no longer the sole test of obviousness and further notes that, when references unite old elements with no change in their respective function and yield predictable results, the claimed subject matter is obvious under KSR [See *KSR*, 127 S.Ct. at 1741, 82 USPQ2d at 1396].

Applicant argues that the combination does not teach or suggest "in response to the ID data received from the identification station, automatically assigning a purchase pick-up point of the multiple purchase pick-up points to the customer". The examiner

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disagrees and notes that it is abundantly clear that the system of Vallabh is operating through a central controller that receives automatic vehicle identification then assigns an available pickup station (col 11).

Applicant argues that the combination does not teach or suggest automatically releasing the purchase pick-up point assigned to the customer when the ordered purchase is obtained. The examiner disagrees and notes that Vallabh clearly teaches automatically assigning stations based on availability (summary) and a concern for the need to quickly service customers (col 8, lines 35-40) and determining which stations are not being used (col 11, 60-65). Vallabh further teaches a detection method that notifies the system that the station is occupied or available and how many vehicles are waiting in line for each pick up station. As noted in the rejection *supra*, the examiner acknowledged that the specific method of identifying and relaying information concerning the occupancy of a pickup station was not specifically identified in Vallabh. The examiner introduced Khan as a viable system for automatically releasing the station so that the next customer vehicle could enter the pickup station. Khan, using the same AVI system as Vallabh, describes a mechanism for alerting the OI processor when a vehicle has exited from a pickup area, thus one of the results of this action is that there is an indication that the area previously occupied by the vehicle is now available. It is clear that combining the exit notification system of Khan to determine the availability of a station as is clearly required by Vallabh to determine the availability and number of vehicles waiting in each pickup line would be desirable. The combination would have

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yielded nothing more than predictable results to one of ordinary skill in the art at the time of the invention with no change in the respective functions of the systems KSR [See KSR, 127 S.Ct. at 1741, 82 USPQ2d at 1396].

In response to applicant's argument that the combination does not disclose the problem to be solved of the instant disclosure "a need for a checkout arrangement sufficiently high to enable customers to avoid waiting in lines even through rush hour", the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

Applicant argues in regards to claim 39 that Khan does not teach or suggest "automatically releasing the purchase pickup point assigned to the customer in response to payment by the customer". The examiner disagrees and notes that in response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Further, the examiner introduced Khan as a viable system for automatically

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releasing the station so that the next customer vehicle could enter the pickup station.

Khan, using the same AVI system as Vallabh, describes a mechanism for alerting the OI processor when a vehicle has exited from a pickup area, thus one of the results of this action is that there is an indication that the area previously occupied by the vehicle is now available. Khan further teaches not releasing the vehicle to exit until payment has been received. It is clear that combining the exit notification and payment system of Khan to determine the availability of a station as is clearly required by Vallabh to determine the availability and number of vehicles waiting in each pickup line would be desirable. The combination would have yielded nothing more than predictable results to one of ordinary skill in the art at the time of the invention with no change in the respective functions of the systems KSR [See *KSR*, 127 S.Ct. at 1741, 82 USPQ2d at 1396].

Applicant argues in regards to claim 40 that Joseph does not teach or suggest "wherein the purchase pick-up point is configured to enable the customer to inspect the ordered purchase, and the control system is configured for automatically releasing the purchase pick-up point assigned to the customer after the ordered purchase is inspected".

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208

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USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Further, the examiner introduced Khan as a viable system for automatically releasing the station so that the next customer vehicle could enter the pickup station. Khan, using the same AVI system as Vallabh, describes a mechanism for alerting the OI processor when a vehicle has exited from a pickup area, thus one of the results of this action is that there is an indication that the area previously occupied by the vehicle is now available. Khan further teaches not releasing the vehicle to exit until payment has been received. It is clear that combining the exit notification and payment system of Vallabh/Khan with an inspection/detection method as is described in Joseph and Vallabh (col 13, 40-50) to determine the availability of a station as is clearly required by Vallabh to determine the availability and number of vehicles waiting in each pickup line would be desirable. The combination would have yielded nothing more that predictable results to one of ordinary skill in the art at the time of the invention with no change in the respective functions of the systems KSR [See *KSR*, 127 S.Ct. at 1741, 82 USPQ2d at 1396].

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Mark Fadok** whose telephone number is **571.272.6755**.

The examiner can normally be reached Monday thru Friday 8:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Jeffrey A. Smith** can be reached on **571.272.6763**.

Any response to this action should be mailed to:

Commissioner for Patents

P.O. Box 1450

Alexandria, Va. 22313-1450

or faxed to:

571-273-8300 [Official communications; including
After Final communications labeled
"Box AF"]

For general questions the receptionist can be reached at
571.272.3600

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Mark Fadok
Primary Examiner

A handwritten signature in black ink, appearing to read 'Mark Fadok', with a long horizontal flourish extending to the right.